

AMENDED IN SENATE MAY 27, 1999

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SENATE BILL

No. 136

Introduced by Senator Knight

January 4, 1999

An act to amend Section 42316 of, and to add Section 42316.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 136, as amended, Knight. Air pollution: Great Basin: mitigation.

(1) Existing law authorizes the Great Basin Unified Air Pollution Control District to require the City of Los Angeles to undertake reasonable measures, including studies, to mitigate the air quality impacts of its activities in the production, diversion, storage, or conveyance of water and authorizes the district to require the city to pay, on an annual basis, reasonable fees, with respect to those activities of the city.

This bill would require, rather than authorize, the district to require the city to undertake those measures and to pay those fees.

(2) Existing law prohibits the mitigation measures described in (1) from affecting the right of the city to produce, divert, store, or convey water and provides that the district has no authority with respect to the water production, diversion, storage, and conveyance activities of the city, except as specified. ~~Under existing law, the city may appeal~~

~~any measure or fee imposed by the district to the state board, as provided.~~

This bill would delete the prohibition on the mitigation measures affecting the right of the city to produce, divert, store, or convey water and would delete the prohibition on the district's authority with regard to the water production activities of the city. ~~The bill would also delete the city's authority to appeal a measure or fee imposed by the district to the state board, and instead, would authorize the city to bring a judicial action to challenge the measure or fee.~~

This bill would provide that the City of Los Angeles is fully responsible for the costs associated with the implementation of air quality mitigation measures within the Owens Valley Planning Area, either pursuant to an order adopted by the Great Basin Unified Air Pollution Control District or pursuant to an order of, or action required by, the United States Environmental Protection Agency. The bill would require that those mitigation measures be implemented so that the Owens Valley Planning Area attains federal ambient air quality standards, as specified, by December 31, 2006. By imposing new duties on a local government with regard to the implementation of air quality mitigation measures, the bill would impose a state-mandated local program.

(3) The bill would direct the Controller after providing a required notice to the city to deduct the amount of any costs incurred by the state for measures to comply with state and federal ambient air quality standards relating to the Owens Dry Lake Planning Area from any subvention, payment, or appropriation to or for the benefit of the City of Los Angeles for any purpose until the total cost of the measures has been recovered by the state.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement is required for certain costs mandated by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of
2 the following:

3 (a) The City of Los Angeles and the Great Basin
4 Unified Air Pollution Control District entered into a
5 Memorandum of Agreement (MOA) dated July 27, 1998,
6 which provides for the implementation of air pollution
7 control measures in the Owens Valley Planning Area, a
8 region that includes the Owens Dry Lake, that are
9 necessary to fully meet state and federal ambient air
10 quality standards for PM 10 (particulate matter having a
11 nominal aerodynamic diameter of 10 microns or less)
12 through effective mitigation of dust storms to minimize
13 the effects of those storms on public health.

14 (b) The citizens of the Owens Valley continue to suffer
15 from the adverse effects of one of the nation's worst air
16 pollution problems.

17 (c) The City of Los Angeles is responsible for creating
18 the conditions in the Owens Dry Lake which were caused
19 by water diversions from the valley that have occurred
20 since 1913.

21 (d) Delays in the negotiations between the City of Los
22 Angeles and the Great Basin Unified Air Pollution
23 Control District pertaining to the Owens Valley Planning
24 Area have repeatedly occurred over the last 18 years, and
25 the Legislature recognizes the possibility that further
26 delays could occur in implementing the air pollution
27 control measures described in the MOA.

28 (e) By its own terms, the MOA will terminate if the
29 United States Environmental Protection Agency (EPA)
30 does not approve California's 1998 revised State
31 Implementation Plan (SIP) by August 20, 1999. If the 1998
32 revised SIP is not so approved by that date, the costs of the

1 Owens Dry Lake air quality mitigation measures may
2 shift to the State of California.

3 SEC. 2. Section 42316 of the Health and Safety Code
4 is amended to read:

5 42316. (a) The Great Basin Unified Air Pollution
6 Control District shall require the City of Los Angeles to
7 undertake measures to comply with state and federal
8 ambient air quality standards, including studies, to
9 mitigate the air quality impacts of its activities in the
10 production, diversion, storage, or conveyance of water
11 and shall require the city to pay, on an annual basis,
12 reasonable fees, based on an estimate of the actual costs
13 to the district of its activities associated with the
14 development of the mitigation measures and related air
15 quality analysis with respect to those activities of the city.
16 Except for studies and monitoring activities, the
17 mitigation measures may only be required or amended
18 on the basis of substantial evidence establishing that
19 water production, diversion, storage, or conveyance by
20 the city causes or contributes to violations of state or
21 federal ambient air quality standards.

22 ~~(b) The city may bring a judicial action to challenge~~
23 ~~any measure or fee imposed by the district under this~~
24 ~~section. The action shall be brought pursuant to Section~~
25 ~~1094.5 of the Code of Civil Procedure and shall be filed~~
26 ~~within 30 days of the adoption of the measure or fee.~~

27 *(b) The city may appeal any measures or fees imposed*
28 *by the district to the state board within 30 days of the*
29 *adoption of the measures or fees. The state board, on at*
30 *least 30 days' notice, shall conduct an independent*
31 *hearing on the validity of the measures or reasonableness*
32 *of the fees that are the subject of the appeal. The decision*
33 *of the state board shall be in writing and shall be served*
34 *on both the district and the city. Pending a decision by the*
35 *state board, the city shall not be required to comply with*
36 *any measures that have been appealed. Either the district*
37 *or the city may bring a judicial action to challenge a*
38 *decision by the state board under this section. The action*
39 *shall be brought pursuant to Section 1094.5 of the Code of*

1 *Civil Procedure and shall be filed within 30 days of service*
2 *of the decision of the state board.*

3 (c) A violation of any measure imposed by the district
4 pursuant to this section is a violation of an order of the
5 district within the meaning of Sections 41513 and 42402.

6 SEC. 3. Section 42316.5 is added to the Health and
7 Safety Code, to read:

8 42316.5. (a) The City of Los Angeles is fully
9 responsible for costs associated with the implementation
10 of air quality mitigation measures undertaken for the
11 purpose of achieving state and federal ambient air quality
12 standards in the Owens Valley Planning Area pursuant to
13 either of the following:

14 (1) An order adopted by the Great Basin Unified Air
15 Pollution Control District pursuant to Section 42316 that
16 imposes air quality mitigation measures.

17 (2) An order of, or action required by, the United
18 States Environmental Protection Agency for the purpose
19 of achieving the federal ambient air quality standards in
20 the Owens Valley Planning Area.

21 (b) The City of Los Angeles shall implement the air
22 quality mitigation measures required by subdivision (a)
23 so that the Owens Valley Planning Area attains federal
24 ambient air quality standards for particulate matter
25 having an aerodynamic diameter of 10 microns or less
26 (PM 10) by December 31, 2006.

27 SEC. 4. If the state incurs any costs for measures
28 relating to the Owens Valley Planning Area, including
29 Owens Dry Lake, to mitigate the air quality impacts of
30 the activities of the City of Los Angeles in the production,
31 diversion, storage, or conveyance of water in order to
32 comply with state and federal ambient air quality
33 standards, the Controller shall deduct the amount of
34 those costs from any subvention, payment, or
35 appropriation to or for the benefit of the City of Los
36 Angeles for any purpose until the total cost of the
37 measures has been recovered by the state. The Controller
38 may deduct an amount equal to that cost from any
39 subvention, payment, or appropriation that will be made
40 during a budget year of the City of Los Angeles that will

1 commence on July 1, if, not later than the January 1
2 immediately preceding the commencement of that fiscal
3 year, the Controller notifies the city of the amounts that
4 will be deducted pursuant to this section.

5 SEC. 5. No reimbursement is required by this act
6 pursuant to Section 6 of Article XIII B of the California
7 Constitution because of the following:

8 (a) With respect to any costs that may be incurred by
9 the Great Basin Unified Air Pollution Control District,
10 those costs are incurred as the result of a program for
11 which legislative authority was requested by that local
12 agency within the meaning of Section 17556 of the
13 Government Code and Section 6 of Article XIII B of the
14 California Constitution.

15 (b) With respect to any costs that may be incurred by
16 the City of Los Angeles, the City of Los Angeles has the
17 authority to levy service charges, fees, or assessments
18 sufficient to pay for the program or level of service
19 mandated by this act, within the meaning of Section 17556
20 of the Government Code and *County of Fresno v. State*
21 of California (1991) 53 Cal.3d 482.

